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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,043	10/03/2003	Gary A. Foos	14222/YOD ITWO:0070	1647

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EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 06/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/679,043

Applicant(s)

FOOS ET AL.

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 14-19, 31 and 36-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-19 and 31 is/are allowed.
- 6) ☒ Claim(s) 1-8 and 36-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed 3/20/2006 is acknowledged.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6, 8, 36, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,666,479 to Clinton ("Clinton").

Clinton discloses in the specification and Figs. 1-5 an invention in the same field of endeavor as applicant's invention and as described in applicant's claims 1-6, 8, 36, and 39. In particular, Clinton shows a torch (10) having a torch butt with an attached handle portion (17) (see Fig. 1), a valve assembly including valve block (22), valve member (23) and valve operating mechanism (including at least portions 35, 37, 38, and 42) operable to control a first flow of fluid through the torch butt (see Fig. 2 and col. 3, lines 25-36). The torch butt includes a dedicated passage (24 and 25) for the flow of cutting oxygen.

In regard to the recitation that the lever is "mutually exclusively" securable to pivot about a first portion of the torch butt or alternatively the second portion of the torch butt (e.g. at least claims 1 and 43), this structural relationship is considered to be present in Clinton. In Clinton, a

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lever (21) is selectively securable to pivot about first and second portions of the torch butt via pins (33 and 34). The openings (49 and 50) of the torch handle are arranged respectively in a first configuration in which one opening registers with the upper pin (34) and the other registers with the lower pin (33) and vice versa (see at least col. 4 line 46 through col. 5, line 5, see also Fig. 5). This arrangement is considered to meet the “mutually exclusive” recitation of applicant’s claims. The examiner further notes that this relationship appears to correspond to the arrangement shown, for instance, in applicant’s figures (e.g. Fig. 7 and 8) in which pin (80) is alternatively secured in holes (84) or hole (86) based on the arrangement of the lever.

The valve operating mechanism, including lever (21) is arranged in a first orientation relative to the torch butt and may be moved to a second portion that is inverted/reversed from the second position (see Fig. 1 and col. 4, line 46 through col. 5, line 15). Further, valve member (23) is shown as a separate portion from valve block (22) (note distinct hatching, Figs. 2-4). This valve member (23) slides within valve block/body (22) in order to open and close the valve (see col. 3, line 37 through col. 4, line 26). Though this valve member (23) is not required to be removed to invert the orientation of the valve operating mechanism, this valve member (23) is capable of sliding movement within the central bore (24) of valve block (22) (see Figs. 2 and 3). When the lever (21) and arm (35) are removed to be reversed, the valve would be capable of being removed from the bore, and is therefore properly regarded as removable. Further, this valve member (23) is shown in Figs. 2-4 to be symmetrical, and thus when removed and reinserted in a second mutually opposed position would enable the torch to function as normal.

In regard to at least claims 41-43, as noted above the valve member (23) is symmetrical and capable of being removed and reinserted in a second mutually opposed position. This

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capability of being placed in a second mutually opposed position is considered to render the valve member “reversible” as claimed. Arm (35) is considered the reversible valve actuator claimed (see at least Figs. 3 and 4 and note reversal of this arm 35).

Clinton further discloses that the torch includes the necessary sealing and sealing means (see col. 3, lines 37-64), a second throttling valve assembly (16), and handle portion (17) has an upper radius and a lower radius that are uniform along the length of the handle (see Fig. 5).

4. Alternatively, claims 1-6, 8, and 36-40 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,709,446 to Miller (“Miller”).

In regard to the recitation in the preamble of a “torch,” a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claims does not depend on the preamble for completeness but, instead, the process steps of structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Further, if the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of the claimed invention’s limitations, then the preamble is not considered a limitation and is of no significance to claim construction. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165 (Fed. Cir. 1999); see also MPEP 2111.02. In this case, the body of the each of the claims do not rely on the preamble for completeness and state merely that the

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intended use of the invention. Accordingly, the recitation of “torch” is not considered a limitation in claim construction of these claims.

Miller discloses in the specification and Figs. 1-11 a portable tool and control valve as described in applicant's claims 1-6, 8, and 36-40. In particular, Miller shows a tool includes a tool butt (62), a valve body (11) including a valve assembly (see components within valve housing 43) with valve (see at least Fig. 2). The valve assembly is removable from and positionable in the tool butt in two mutually opposed positions (see at least Figs. 2 and 3 and col. 3, lines 54-70). Lever (64) is also inverted in the same manner as the valve assembly and selectively positioned between a first and second portion (see at least Figs. 2 and 3). The valve assembly includes a dedicated passageway (see bore 44) that receives a fluid flow when the valve assembly is the opposed positions.

In regard to the recitation that the lever is “mutually exclusively” securable to pivot about a first portion of the torch butt or alternatively the second portion of the torch butt, this structural relationship is considered to be present in Miller. As shown particularly in Figs. 2 and 3 of Miller, handle (64) is secured in a first orientation via pin (65) (Fig.2) and a second orientation via pin (65) that is inverted from the first orientation and considered mutually exclusively securable as recited in applicant's claims. The examiner also notes that the this arrangement of the handle being secured on either side of the torch body via a single pin appears identical to the arrangement disclosed by applicant, for instance in Figures 7 and 8 of applicant's drawings in which single pin (80) is used to reverse the orientation of the handle and is secured in either hole (84) or hole (86).

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In regard to at least claim 36, Miller shows a first inlet that would be capable of receiving fuel (note inlet 36 and also the inlet for tube 77 in the embodiment of Figs. 6-11) and a second inlet (at least 58). Further the valve is clearly shown to be arranged crosswise relative to the longitudinal axis of the body (see at least Fig. 6).

In regard to at least claim 37, the valve is actuated in a direction askew to the longitudinal axis of the tool transitions.

In regard to at least claim 38, note the control of fluid through passageways (39 and 40).

In regard to at least claim 39, the inlet (at least 58) is configured to receive any pressurized gas (see col. 2, lines 6-9).

In regard to at least claim 40, note at least passageway (35).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clinton as applied to claim 1 above in view of U.S. Patent No. 5,571,427 to Dimock et al. ("Dimock").

Clinton discloses all the limitations of claim 7 except that the handle has a skull-shaped cross section.

Dimock teaches a handle for a torch in the same field of endeavor as both applicant's invention and Clinton. In Dimock the torch includes a handle (16) that has a D/skull shaped cross section (see Fig. 6).

Therefore, in regard to claim 7, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the torch handle of Clinton to incorporate the D/skull shape of Dimock as this shape desirably provides a better ergonomic fit and better gripping surface for the hand of the operator and reduces the wasted space associated with rounded handles (see Dimock, col. 5, lines 11-15).

8. Alternatively, claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller as applied to claim 1 above in view of U.S. Patent No. 5,571,427 to Dimock et al. ("Dimock").

Miller discloses all the limitations of claim 7 except that possibly that the handle has a skull-shaped cross section.

Dimock teaches a handle for a tool in the same field of endeavor as both applicant's invention and Miller. In Dimock the torch includes a handle (16) that has a D/skull shaped cross section (see Fig. 6).

Therefore, in regard to claim 7, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the torch handle of Miller to incorporate the D/skull shape of Dimock as this shape desirably provides a better ergonomic fit and better gripping surface for the hand of the operator and reduces the wasted space associated with rounded handles (see Dimock, col. 5, lines 11-15).

Allowable Subject Matter

9. Claims 14-19 and 31 are allowable over the prior art.

The following is a statement of reasons for the indication of allowable subject matter:

In regard to claim 14, the prior art does not teach or suggest the torch having the structural limitations as recited in claim 14 including that the torch butt comprises first and second intakes such that the valve assembly receives the fluid from the first intake when in the first orientation and from the second intake in the second orientation.

Claims 15-19 are allowable as being dependent, either directly or indirectly, upon allowable claim 14.

In regard to claim 31, the prior art does not teach or suggest the torch having the structural limitations as recited in claim 31 including that the cutting oxygen valve assembly receives the fluid flow from the first intake when in the first orientation and the second intake when in the second orientation.

Response to Arguments

10. Applicant's arguments filed 3/20/2006 regarding claims 1-8 and 36-43 have been fully considered but they are not persuasive.

Applicant argues that neither Clinton nor Miller show the arrangement of a “lever mutually exclusively securable to pivot about a first portion of the torch butt or alternatively a second portion of the torch butt.” However, as noted above, both Clinton and Miller show such an arrangement. Further, as has been noted above, in each reference the means of securing the lever to the torch butt in order to pivot about a pin is substantially identical to the arrangement disclosed in applicant's Figures.

Applicant's new claims 41-43 are not considered to distinguish over Miller for the reasons noted above.

Applicant has not argued against the teachings of the reference to Dimock. Accordingly, this reference is considered to properly show that for which it has been cited.

Accordingly, applicant's claims 1-8 and 36-43 are not considered to distinguish over the prior art of record.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg, can be reached at (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jcc
May 31, 2006


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749